



STATE OF DELAWARE
DEPARTMENT OF AGRICULTURE
DELAWARE THOROUGHBRED RACING COMMISSION
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Delaware Thoroughbred Racing Commission
Minutes of Public Hearing and Regular Meeting Held On September 12, 2012

The Delaware Thoroughbred Racing Commission held a public hearing and regular meeting on Wednesday, September 12, 2012, at 9:15 a.m., in the first floor conference room of the Horsemen's Office, located on the grounds of Delaware Park, 777 Delaware Park Boulevard, Wilmington, Delaware 19804.

The following Commission members were present:

W. Duncan Patterson, Jr., Chairman
Edward J. Stegemeier, Secretary/Commissioner
Bernard J. Daney, Commissioner
Henry James Decker, Commissioner
Debra Killeen, Commissioner

The following individuals also were present:

Ed Kee, Delaware Secretary of Agriculture
Andrew Kerber, Esq., Deputy Attorney General, Commission Counsel
Barbara Gadbois, Esq., Deputy Attorney General, Stewards' Counsel
John F. Wayne, DTRC, Executive Director
Lynn Ashby, Trainer
Carlos Barrera, Delaware Park, Racing Official, Witness, Spanish/English Translator for Mr. Ortiz
Steven Bertrando, Owner, DTHA Board Member
Kidd Breeden, Jockey Agent
Frederick "Fritz" Burkhardt, DTRC, Associate State Steward, Witness
Robert E. Colton, Delaware Jockey's Association, Director, Witness
Jose De La Torre, Jockey Agent
Jeff Ganc, Delaware Park, Assistant Director of Security
Mario Gendrachi, Jockey Agent
E. Patience Gowan, Owner
Bessie Gruwell, DTHA, Executive Director
G. Jack Houghton, Jr., DTRC, Chief State Steward
Brenda Jones, Delaware Park, Stewards Secretary, Spanish/English Translator for Mr. Rodriguez
Madeline Locke, DTHA, President
John E. Mooney, Delaware Park, Executive Director of Racing
Jose Nunez, Trainer
Yomar Ortiz, Apprentice Jockey, Witness
Shelley Perkins, DTRC, Paralegal I (recording minutes)
John T. Peters, D.V.M., DTRC, Chief Commission Veterinarian
Kathy Picciano, D.V.M., DTRC, Associate Commission Veterinarian
Erika Rodriguez, Vendor
Ramon L. Rodriguez, DTRC, Inspector
Victor A. Rodriguez, Apprentice Jockey, Appellant
Ann Sawyer, Wilcox & Fetzer, Court Reporter
Andy Simoff, Owner/Trainer
Arthur Stauffer, Sr., Owner/Trainer
Francis J. Swift, Jr., DTRC, Inspector
Paul Trapani, Owner/Trainer, DTHA Board Member
John E. Worsley, Owner/Trainer
Michael Vild, Esq., Delaware Park, Sr. Vice President of Racing/General Counsel

1. **WELCOME & CALL TO ORDER**

At 9:20 a.m., Chairman Patterson called the meeting to order and welcomed those in attendance. Executive Director Wayne confirmed that the audio recorder was turned on and an audio recording of the meeting was underway.

2. **APPROVAL OF MINUTES**

The Commission reviewed minutes of the August 8, 2012 meeting. Commissioner Daney made a motion, seconded by Mr. Stegemeier to approve the minutes with the changes listed below. By unanimous vote, the motion carried.

A. **Corrections to the minutes of August 8, 2012:**

1. **Salix (Agenda Item #4. New Business, Paragraph C.)**

Secretary/Commissioner Stegemeier: *"Strictly for clarification – I had a pretty good 'feel' for what percentage of horses were racing on Lasix, but my point was shouldn't we think about taking the "L" out of the programs instead of bringing attention to the fact that we're medicating horses – even though it is a therapeutic medicine. The minutes are fine but I just wanted to clarify why I asked that question."*

Chairman Patterson: *"We would not want to take the "L" out of the program because the "L" is basically used nationally to signify using Lasix. And certainly first-time Lasix is very important to the betting public. Also, there are a significant number of Owners who have pledged to run their 2-year-olds off of Lasix – and we may see more of that. So, at this point unless we change nationally we're not in a position to take the "L" off the program."*

Secretary/Commissioner Stegemeier: *"I am in agreement with you. It was something that I wanted to put 'on the table.' Also, from the position of this Commission, we have tried to be a leader in some areas and in many cases following the national groups has created some issues. I hope that as a Commission we will remain independent in our thinking and instead of waiting for the 'tail to wag the dog' we take action on our own given the correctness of an issue – like the issue we had with the shoes a few years ago. I hope that we can keep our thinking open and do what is best for Delaware and not necessarily follow the lead all the time off the national position."*

Chairman Patterson: *"Good point, thank you."*

2. **Grammatical Corrections** (indicated by underlined text)

- Page 2, item # 1: A telephone connection was established with Mr. Daney.
- Page 4, item # 4A-4: As shown below, in a letter to the Commission, the DTRC Board of Stewards submitted their recommendation to keep rule 8.10.2 intact and not allow use of electronic communication devices in the Jockey's Room.
- Page 5, item # 4A-6: After the vote, Chairman Patterson remarked that he believed the rule to be antiquated and asked Ms. Coleman to meet with Mr. Houghton and Mr. Colton to determine if there is an alternative to the existing rule that is acceptable to the Stewards and Jockeys.

3. PUBLIC HEARING – APPEALS TO THE COMMISSION FROM STEWARD’S RULINGS

- A.** Appellant: Victor A. Rodriguez, Stewards’ Ruling 61-2012 – Will proceed.
- B.** Appellant: Jamie Ness, Stewards’ Ruling 44-2012 – Continued to October 10, 2012.
- C.** Appellant: Juan Vazquez, Stewards’ Ruling 31-2012 – Continued to October 10, 2012.
Appellant: Juan Vazquez, Stewards’ Ruling 32-2012 – Continued to October 10, 2012.
Appellant: Juan Vazquez, Stewards’ Ruling 33-2012 – Continued to October 10, 2012.

3.1 Editorial Statement by Chairman Patterson

“Two of the appeals have been continued, Mr. Ness’ and Mr. Vazquez’. I will tell you, speaking for the Commission it is not our desire to have a continuance on any appeal. However, in both these cases our hands were somewhat tied.”

“In Mr. Ness’ case, his original attorney is no longer going to represent him and they have not identified another attorney. In Mr. Vazquez’ case, his attorney (Mr. Alan Foreman) was not available today. This puts us in a very precarious situation if we go ahead with an appeal without an attorney present if that appellant has requested an attorney.”

“I know that the Commissions, when this happens around the country, get vilified for the fact that – and the perception is that – penalties are not enforced on individuals. However, it is the court system that we have to abide by which delays the process.”

Chairman Patterson recognized Commissioner Decker and yielded the floor.

3.2 Editorial Statement by Commissioner Decker

“Mr. Chairman, I know that you feel strongly about this but I feel very strongly about this.”

“I am tired of people ‘gaming’ the appeal process – and I know that it goes on. I am also concerned about the other trainers that are disadvantaged by this as to the horses’ standing and the lack of purses that are distributed to them.”

“While we must pay attention to the due-process procedures, there are other alternatives available to us to ensure that people get the message that continuances are serious business. We are not here for the convenience of some lawyer who has another case in another jurisdiction or has some other judicial hearing. Trainers and jockeys and anyone else must ensure that they are getting priority with their attorney otherwise they will suffer the consequences if I have anything to say about it in front of this Commission.”

“I am specifically tired of the way these continuances and this ‘unavailability’ of lawyers and these drawn-out hearings take place with regard to our hearings. And, with that I just want to put everyone ‘on-notice’ that I for one intend to do something about it within the ability of the Commission to act.”

Commissioner Daney remarked that the ‘law is the law.’ Mr. Decker continued.

“I know what the law is and I’m saying we remain within the confines of the law. But there are other alternatives available to us and I intend to pursue them when these continuances are played out or when we are taken advantage of in relation to executing the business of the Commission. When such cases arise I will be more than willing to reveal what I suggest but I will be suggesting appropriate alternatives within the law.”

3.3 **Editorial Closing by Chairman Patterson**

"You're absolutely right and certainly we can take that into consideration in rendering a decision when these cases do come about."

A. **In the matter of Victor A. Rodriguez, Appeal Number ASR-61-2012**

A-1 **Nature of the Proceedings**

This appeal is before the Delaware Thoroughbred Racing Commission (the "DTRC") pursuant to the provisions of DTRC Rule 19. Following a hearing before the Stewards on August 28, 2012, Apprentice Jockey, Mr. Victor A. Rodriguez was found in Stewards' Ruling 61-2012 to have violated DTRC Rules 14.15.1 and 14.16.1 for "*extremely careless riding at the 3/8 pole causing his horse to clip heels and fall in the second race on Saturday, August 25, 2012; and for pushing another rider with his hand during the running of the race at the quarter pole during the fourth race on Saturday, August 25, 2012.*" The Stewards suspended Mr. Rodriguez from Wednesday, August 29, 2012 through and including Saturday, November 3, 2012. Mr. Rodriguez filed a timely appeal of the ruling. Mr. Rodriguez appeared and waived his right to be represented by legal counsel. The DTRC was represented by Deputy Attorney General Andrew G. Kerber and the Stewards were represented by Deputy Attorney General Barbara Gadbois. Mr. Rodriguez acknowledged that he had committed the violations cited by the Stewards and argued only that the 60-day suspension penalty assessed by the Stewards was excessive.

Ms. Gadbois addressed the Commission before the record was opened and stated that an issue had just arisen that required Mr. Kerber's consultation with her and with Mr. Rodriguez. Ms. Gadbois asked that Mr. Kerber be allowed to meet in consultation. Chairman Patterson agreed and the Commission was recessed for approximately five minutes.

A-2 **Appeal Hearing**

At approximately 9:45 a.m. Mr. Kerber opened the record in the matter of Mr. Victor A. Rodriguez, Appeal #ASR-61-2012. Mr. Rodriguez was present. Ms. Gadbois was present. Mr. Kerber advised the Commission that the short conference held was in reference to Mr. Rodriguez' request to have an independent interpreter since he feels more comfortable proceeding in Spanish. Mr. Rodriguez has agreed that Stewards' Secretary, Ms. Brenda Jones, was suitable to act as his interpreter to translate Spanish/English. Mr. Rodriguez answered verbally for the record that Ms. Jones was acceptable and Ms. Jones answered verbally for the record that she was present. Mr. Carlos Barrera will translate for Mr. Yomar Ortiz. Ms. Ann Sawyer of Wilcox & Fetzer was present and recorded the proceedings verbatim.

List of witnesses that testified (in alphabetical order)

- Mr. Carlos Barrera, Delaware Park, Racing Official, and Spanish/English Translation for Mr. Ortiz
- Mr. Frederick "Fritz" Burkhardt, DTRC, Associate State Steward
- Mr. Robert E. Colton, Delaware Jockey's Association, Director
- Ms. Brenda Jones, Delaware Park, Stewards Secretary, Spanish/English Translator for Mr. Rodriguez
- Mr. Yomar Ortiz, Apprentice Jockey

A-3 Public Deliberation – Record Closed

Following testimony, Mr. Kerber closed the record and the Commission proceeded with public deliberation.

Commission “Training” Amendment: Mr. Decker stated for the record that Mr. Rodriguez, *“needs some education and experience and if I were you I would avail myself of Mr. Barrera who is obviously one of the all-time great jockeys, and ask for help. We’ve had people go to the Steward’s room during live racing and sit quietly and watch the races with the Stewards. You can ask the Stewards to show you more films and review the films with the Stewards.”*

Chairman Patterson stated for the record that *“we are saying ‘encourage’ and I would rather ‘mandate’ that Mr. Rodriguez and the Stewards meet for further training and certainly Mr. Barrera is the most qualified because he is best able to communicate with Mr. Rodriguez in Spanish. Not that we can bring this matter back but, after all, the whole point of this is to get Mr. Rodriguez more training. But if we hear that Mr. Rodriguez does not engage the Stewards and Mr. Barrera in further training the Commission will take further action by advising the Stewards where he is riding next and encourage those Stewards to deny Mr. Rodriguez’ license.”*

A-4 Decision – Record Open

Mr. Kerber opened the record and the Commission issued their decision. Chairman Patterson called the question and asked *“all those in favor of supporting the Stewards’ ruling and the Commission’s amendment which is to mandate further training; and in the event Mr. Rodriguez does not engage the Stewards and Mr. Carlos Barrera in further training the Commission will take further action by advising the Stewards where he is riding next and to encourage those Stewards to deny Mr. Rodriguez’ license, please signify by saying ‘Aye’ and those opposed signify by saying ‘Nay.’”*

Secretary/Commissioner Stegemeier	Aye
Commissioner Daney	Aye
Commissioner Killeen	Aye
Commissioner Decker	Aye
Chairman Patterson	Aye

None opposed

By unanimous vote of 5-0, the motion is carried and the DTRC affirms Stewards’ Ruling 61-2012 and the suspension through November 3, 2012, and amends the ruling to include training. The appeal of Mr. Rodriguez is denied.

A-5 Record Closed

Mr. Kerber closed the record on the proceedings and dismissed the court reporter.

4. **OLD BUSINESS**

A. **Delaware Racing Association 2012 Capital Budget – June 2012 Update**

During the August 8, 2012 DTRC Commission meeting, Commissioner Decker asked Mr. Vild to find out the meaning of “disaster recovery on three properties.” Soon after August 8, 2012, Mr. Vild replied in an e-mail, sent to Mr. Wayne and he in turn forwarded it to the Commissioners.

B. **By-Laws**

During the August 8, 2012 DTRC Commission meeting, Commissioner Decker asked Mr. Kerber to ascertain whether or not the Commission may adopt by-laws.

Mr. Kerber reported that he had addressed the issue with the Deputy Attorney General for the Division of Professional Regulation and advised the DTRC that none of the other professional boards and commissions within Delaware have by-laws.

By statute, the DTRC has the authority to pass rules and regulations. And, consistent with Mr. Kerber's previous recommendation, he advised the Commission that anything wanted in a by-law may be adopted within the rules and regulations. The originating issue was how the DTRC '*calls the question*' during its' voting process. Commissioner Decker had a good structure suggestion – when considering alternative/differing motions and the order in which they are introduced – which was that the first motion that passes should be the prevailing motion. Chairman Patterson, Commissioner Decker and Commissioner Killeen voiced their agreement to use Robert's Rules of Order as a reference.

5. **NEW BUSINESS**

A. **International Conference on Health, Safety, and Welfare of Jockeys**

Secretary/Commissioner Stegemeier, who also serves as Chairman of the Delaware Jockey's Health & Welfare Benefit Board (DJH&WBB) will attend the conference along with DTRC Executive Director, Mr. John F. Wayne. Dr. Sue Snider from the University of Delaware Cooperative Extension program will attend. Mr. Robert Colton, the DJH&WBB plan administrator may attend. The two-day conference will be held at Monmouth Park on September 15 and 16, 2012.

B. **International Conference of Racing Analysts and Veterinarians (ICRAV)** **September 15-22, 2012, in Philadelphia, Pennsylvania**

ICRAV is the racing industry's major technical conference. The Conference's focus is the provision of the latest information, best practices and new practices. Chairman Patterson, Dr. Picciano, Dr. Teichner, and Mr. Wayne will attend the conference. The Commission requested a written synopsis from the DTRC Commission Veterinarians.

6. **REPORT FROM DTRC EXECUTIVE DIRECTOR**

A. **Summary of Activities Report**

Executive Director Wayne submitted his written report to the Commission and read into the record the statistics for the period August 1 to August 31, 2012. The Commission suggested adding a "past year" column. Report details included the following:

	<u>August 2012</u>	<u>Year-to-Date</u>
Number of persons fingerprinted	4	79
Fingerprint fees collected	\$316.00	\$6,241.00
DTRC Licenses issued	352	4,001
Amount of fines & appeal fees collected	\$7,941.00	\$14,826.00
License fees collected	\$14,200.00	\$142,470.00
National Surveys Answered	1	
Police Contacts	6	
VLEU Contacts	9	
National Racing Compact Background Investigations	8	
National Racing Compact Application Reviews	30	
FOIA Inquires	0	
Public Inquiries	14	
Media Inquiries	3	
Human Drug Tests Administered	18	
Human Drug Positives	1	
Jurisdictional Inquiries	17	

Executive Director Wayne reported that statistically, licensing numbers are far behind last year and cited that declining numbers are a reflection of fewer horses racing, fewer starters-per-race, less racing opportunities, and stressed economic conditions. The three-year license that is issued from the DTRC also contributes to up and down numbers from year to year as well.

All Stewards' Reports are reviewed by the Executive Director and posted on the Department of Agriculture website. All Stewards' Rulings are posted as well. The Executive Director receives inquiries from the public in that regard and they have all been positive.

Commissioner Daney thanked Mr. Wayne for an excellent report.

6. **REPORT FROM CHIEF COMMISSION VETERINARIAN**

A. **Veterinary Statistical Health Report**

In August 2012, Dr. Peters reported 0 deaths during training and 3 deaths during racing; 1 condylar fracture, 1 slab fracture, and 1 broken sesamoid. There was 1 death due to laminitis. So far in September 2012, Dr. Peters reported 1 death during racing due to a fractured knee and 0 deaths during training. Per 1,000 starts we are doing better than last year but not as well as in years previous to last.

7. **REPORT FROM DELAWARE THOROUGHBRED HORSEMEN'S ASSOCIATION**

A. **Delaware Certified Thoroughbred Program Report**

Executive Director Gruwell submitted the report for the Delaware Certified Thoroughbred Program. 258 different horses, started 638 times with 101 wins, 90 2nd place finishes, and 99 3rd place finishes.

So far in 2012, DCTP has paid out a little over \$603,000. Applications were consistent with last year and the last quarter of the year is still the time they receive the most applications. There is some money on hold due to appeals. Balance is \$312,695, paid out \$161,000 in bonuses in July 2012/August 2012.

8. **PUBLIC COMMENT**

Chairman Patterson recognized the following attendees for public comment.

Michael Vild, Esq., Delaware Park, Sr. Vice President of Racing/General Counsel Vild

Nothing to add.

Robert Colton, Director of the Delaware Jockey's Association

Mr. Colton reported having second thoughts about not having a medical doctor on-site during racing. Mr. Colton will bring the subject to the next Delaware Park Safety Committee meeting. Specifically, when apprentice jockey Mr. Victor Rodriguez was thrown from his mount it was the EMT's that attended to him. Mr. Rodriguez was subsequently cleared.

Commissioner Decker

Commissioner Decker discussed Commissioner Killeen's suggestion to increase jockey, and apprentice jockey educational efforts. Chairman Patterson and the Commissioners agreed to discuss the issue with the Stewards.

Secretary of Agriculture, Ed Kee

Secretary Kee directed the Commission to find a more suitable location for DTRC Commission meetings and promised that any charges billed for room fees by Delaware Park would be paid by the Department of Agriculture.

Ms. Madeline Locke, DTHA President

Nothing to add.

9. **EXECUTIVE SESSION**

None held.

10. **ADJOURNMENT**

At 12:48 p.m., upon a motion duly made and seconded, the meeting was adjourned. The Commission will meet next on Wednesday, October 10, 2012.